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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 ANTHONY L. DAVIS,
12 Plaintiff,

13 v.

14 V. ESCARCEGA, et al.,
15 Defendants.
16

No. 2:22-CV-1433-KJM-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel,
19 ECF No. 28.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the Court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Plaintiff contends the appointment of counsel is warranted because he has limited
10 access to the prison law library and materials such as paper, pens, and envelopes. Plaintiff also
11 states that he is untrained in the law. Finally, Plaintiff states that appointment of counsel will
12 facilitate investigation and prosecution of his case.

13 As with most inmates pursuing litigation in federal court, these represent typical
14 and not exceptional circumstances. A review of Plaintiff's filings to date reflects that he is able to
15 sufficiently articulate his claims and arguments on his own. Further, the Court cannot say at this
16 stage of the proceedings prior to completion of discovery and consideration of any dispositive
17 motions that Plaintiff has established any particular likelihood of success on the merits. Finally,
18 the issues involved in this case are not overly complex factually or legally.

19 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
20 appointment of counsel, ECF No. 28, is denied.

21 Dated: September 1, 2023



22 DENNIS M. COTA
23 UNITED STATES MAGISTRATE JUDGE
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